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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,278	08/04/2006	Richard A. Belanger	70300-0106US	5013

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CLARK & BRODY  
1090 VERMONT AVENUE, NW  
SUITE 250  
WASHINGTON, DC 20005

EXAMINER
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WOOD, JONATHAN K

ART UNIT	PAPER NUMBER
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3754

MAIL DATE	DELIVERY MODE
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03/03/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/588,278	<b>Applicant(s)</b> BELANGER ET AL.	
	<b>Examiner</b> JONATHAN WOOD	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/4/2006</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the gripper, drag element, pressure relief element, and return spring must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the

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description: 3, 23, 25, and 27. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

3. Claim 9 is objected to because of the following informalities: The claim, as written, depends upon itself. Appropriate correction is required. For purposes of examination, examiner interprets the claim as being dependent on claim 1.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation "said shell" in line 2. There is insufficient antecedent basis for this limitation in the claim. It is suggested to amend to 'a shell' or define a shell earlier in the claim.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3-5, 8-9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,033,484 to *Ornsteen (Ornsteen)*.

*Ornsteen* shows a dispenser of fluid materials comprising a handle portion (40) with a mount (10) containing an annular slot (15) for receiving a fluid cartridge (14), a return spring (52), a plunger (46), a trigger (54) connected to a gripper mechanism (50) to advance the plunger, wherein the plunger disengages from the gripper mechanism when the trigger is released to allow the plunger to move away from the cartridge (col. 5, ll. 54-67), and a drag element (66) to limit the movement of the plunger away from the cartridge (col. 5, ll. 54-59).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Ornsteen* in view of US Patent No. 4,065,034 to *Callan (Callan)*.

*Ornsteen* shows all aspects of the applicant's invention as set forth in claim 1, but discloses that the plunger comprises a continuous resilient surface instead of a surface having a plurality of teeth. However, *Callan* shows a dispenser with a plunger (21) comprising teeth (22) engaged to a gripper (25) to be an equivalent structure known in the art. Therefore, because these two drive mechanisms were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute a plunger comprising teeth and corresponding gripper mechanism for a plunger with a continuous resilient surface and corresponding gripper mechanism.

10. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Ornsteen* in view of US Patent No. 4,523,705 to *Belanger et al.* (*Belanger*).

*Ornsteen* shows all aspects of the applicant's invention as set forth in claim 1, but does not disclose that the dispenser comprises a spring pressure relief element. However, *Belanger* shows a dispenser similar to that of *Ornsteen* with a trigger mechanism (40) containing a spring pressure relief element (42). It would have been obvious to one having ordinary skill in the art at the time of the invention, under the teachings of *Belanger*, to have manufactured the dispenser of *Ornsteen* with the spring pressure relief element of *Belanger* in order to ensure that the mechanism which moves the fluid in the dispenser and its chamber are not damaged due to excessive force (*Belanger*, col. 3, ll. 55-60).

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Ornsteen* in view of US Patent No. 4,826,049 to *Speer*.

*Ornsteen* shows all aspects of the applicant's invention as set forth in claim 1, but does not disclose the dispenser in combination with a heating stand. However, *Speer* teaches a dispenser like that of *Ornsteen* which is made cordless by use of a heating stand (14). It would have been obvious to one having ordinary skill in the art at the time of the invention, under the teachings of *Speer*, to have made the dispenser of *Ornsteen* cordless and in combination with a heating stand in order to provide greater flexibility of use (*Speer*, col. 1, ll. 28-31).

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- US Patent No. 3,228,566 to *Knox, Jr.* discloses a dispenser which utilizes a heating stand similar to that in applicant's invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN WOOD whose telephone number is (571)270-7422. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JKW/

Examiner, Art Unit 3754

/Kevin P. Shaver/

Supervisory Patent Examiner, Art Unit 3754